



133 Interstate Lane, Kalispell, MT 59901 | www.flatheadcd.org
| 406-752-4220

CALL TO ORDER & ATTENDANCE: Chair, Pete Woll called the May 20, 2021, 310-Special meeting to order at 1:00 P.M. in the conference room.

Board members present:

Pete Woll, Chair; John Ellis, Vice-Chair; Lech Naumovich, Secretary-Treasurer; Scott Rumsey; Donna Pridmore, Supervisor; Verdell Jackson, Supervisor; being a quorum of the Board.

Also, in attendance were Hailey Graf and Ginger Kauffman, Staff; Gordon Ash, Associate Supervisor; Kody Coxen, Associate Supervisor; Roger Noble; Kenny Breidinger, Fish Wildlife & Parks (FWP); Casey Malmquist; Melissa Brickl; Ann Maran, DNRC; Cate Walker, Bruce Boody Landscape Architect Inc.

PUBLIC COMMENT: No one was present to comment on items not listed on the agenda.

310

95 Karrow LLC, FL-2021-027, Whitefish River, grading/dock/trail etc.:

Bridge

Ann Maran, Real Estate DNRC Management Specialist for the Kalispell Unit, provided background on how the easement across Whitefish River to build the bridge would be administered. She stated that when DNRC issues an easement for a bridge over navigable waters, it is issued to a public entity such as the City of Whitefish. The easement is not issued to the project developer. However, DNRC cannot issue an easement until proof of access is secured from BNSF on the other side of the road. It is not uncommon for grantees of easements to have arrangements with someone else to own or construct improvements such as the bridge. When that access/easement is determined, DNRC can then proceed with their process. She noted that cumulative effects, such as number of bridges over the stream, are part of their Environmental Assessment process.

The Board and FWP questioned the need for another bridge in such close proximity to other bridges that already exist. Bruce Boody explained that a critical element of the development of this project is its proximity to downtown and its location on the river. He added that it is designed to connect sections of Whitefish as the city expands and is provided for the public. Casey Malmquist noted that the bridge and trail are part of the city trail system and are a condition of approval.

Roger Noble provided printouts showing the bridge location and noted that the bridge abutments are above the 100-year floodplain and will have little impact to the streambank.

Kenny Breidinger asked for clarification on why the developer is requesting a 310-permit for the bridge when the City of Whitefish will hold the easement. Casey responded that the City is requiring it as a condition of approval. He indicated that once the project is complete the easement would be given back to the City of Whitefish. Roger added that DRNC is dictating who is permitting the easement for the bridge and clarified that the bridge connects from private property to private property.

Kenny described that very little of the existing trail system along the Whitefish River has been permitted. This was an issue with the City of Whitefish that seems to be on-going. He added that in making decisions, cumulative impacts must be considered and reminded the Board that the Adopted Rules prohibit the use of asphalt close to the stream.

The Board asked for more specific details about the bridge including the location in relation to other crossings and height above the water. Bruce provided that the lowest girder must be at least 2 feet above the 100-year flood elevation and this bridge was designed to exceed that.

Casey asked for clarification as to why the Board previously approved the project and has such concerns over it now. Lech Naumovich responded that prior approval of a project does not set a precedent or guarantee future approval. He described that previously they were unable to see where the trail would be in relation to the stream.

Stormwater.

John Ellis provided photos of the stormwater portion of the project including the area where the bioswales would be and where the outfall to the Whitefish River would be. Bruce Boody described the functions of the stormwater system, stating that it is designed to slow the water and filter out pollutants before they can enter the river. Casey added that the City of Whitefish and the Department of Environmental Quality (DEQ) have already reviewed the system.

Lech asked for clarification on where the pollutants would be coming from and the types of pollutants that they expected the stormwater system to treat. Roger explained that most of the pollutants would come from the parking lots and some from the surrounding areas and would likely consist of sediment and hydrocarbons which will be treated at a number of areas throughout the site. Casey noted that the City of Whitefish and DEQ also review this.

Trail

John Ellis provided photos of the trail and asked the applicants to address moving the trail further away from stream in some areas, specifically where it starts up the hill.

Bruce provided two new drawings and explained that they have shifted the trail between the boardwalk and the bridge moving it approximately 15-20 feet away from the river. John was satisfied with the change, however, Kenny noted that the trail is still asphalt.

Bruce explained that the trail is all in-sloped away from the river. Runoff will infiltrate into coarse gravels which will release at certain points towards the river. It will travel under the trail through coarse gravels and via sheet-flow through native vegetation before getting to the river.

Potential alternatives to the size and material of the trail were discussed. Gordon Ash questioned the need for the trail to be asphalt to comply with ADA rules, citing gravel paths used by the Forest Service which are ADA approved. Bruce replied that the use of this trail is expected to be 2,000 - 3,000 people per day and a gravel path would not hold up. Roger described that with all the constraints and the amount of traffic, asphalt is likely the best material for reducing or preventing resource damage. The board questioned if decomposed granite or a resin-based asphalt material could be used.

Kenny asked about the possibility of narrowing the trail to reduce the amount of asphalt and impervious surfaces. Casey expressed concern that with the high traffic, a narrower trail would lead to people walking off the trail and causing damage to the riparian area. Kenny compared the 10-foot width of the trail to a single-lane road and stated that FWP would never permit a Department of Transportation (DOT) paved road this close to a river.

The board again discussed that the City of Whitefish is placing these requirements and trail specifications on contractors that do not follow the FCD Adopted Rules. John Ellis reiterated that the City of Whitefish is putting both the developer and the Conservation District in a bad place. He noted that this is one of the last sections of trail to go in, but that each section of the trail has added more and more impermeable surfaces and that the Board must consider cumulative impacts.

The Board also discussed the need to weigh public benefits. Lech provided that there are benefits to the trail that need to be considered. Casey added that this trail could be used as an outreach opportunity to champion river health and riparian areas through interpretive signs along the trail. Bruce reiterated that the master plans for the Whitefish trail system were designed to help connect neighborhoods to schools and the downtown area. Kenny agreed that there are public benefits to the trail but reiterated that with increased development along the river, it is increasingly important to protect what is left.

The Board asked several questions regarding maintenance of the trail and snow removal. Casey explained that the city would do the maintenance of the trail as part of the trail system but that the developer is responsible for the areas within the development. Discussion called for.

John Ellis motioned "to approve the bridge, trail, and the stormwater systems as submitted in the application and with modifications submitted. The board walk and dock was modified 5/10/21. The trail new submission 5/20/21, stormwater system 5/20 /21." Verdell Jackson seconded.

Lech Naumovich expressed that he would like to see more communication with the City of Whitefish in the future so that more projects do not face this same challenge. He suggested that FCD work with the City to develop better trail construction standards that meet the requirements in the FCD Adopted Rules. Kenny reiterated that the path is in direct violation of the FCD Adopted Rules, that it will have impacts to the stream and immediate banks, and that there are other more reasonable alternatives.

Motion did not pass.

The board further discussed options for completing the trail in compliance with the FCD Adopted Rules. Donna Pridmore reiterated that the other sections of the trail were not constructed with input from FCD and are currently in violation. She expressed that the FCD cannot continue to turn a blind eye to the violations encouraged by the City of Whitefish.

Casey expressed frustration regarding the permitting process. He explained that they have been attempting to navigate the permitting between agencies for a long time and he does not understand why the FCD Board would first permit the project then not permit the project. He asked for clarification on why the board would not permit the trail now, even if there have been no changes to the Adopted Rules.

Kenny explained that the board needs to explain why they would be deviating from the Adopted Rules if they permitted the trail. He also stated that the 310 Law applies to the immediate bed and banks of the river and looks at impacts to the stream. In this location the FCD has jurisdiction of a fairly large area because that applies to the top of the bank, not just to the mean high-water mark.

Pete Woll described the FCD will sometimes use 20-feet from the top of the bank as a rule of thumb for determining jurisdiction. However, FCD jurisdiction extends farther than 20-feet from the bank in many cases. He also explained that the Adopted Rules were adopted as a guide but that the Board can deviate from the rules as long as there is good justification. Kenny added that when the district is determining jurisdiction, they look for a change in grade and a change in vegetation. Melissa Brickl asked how jurisdiction is affected by all the fill that was removed at the trail site. Kenny described that FCD has previously taken jurisdiction over streambanks that have been altered if they are functioning.

Casey and Bruce described that they had to remove 70 yards of material that was pushed over the natural banks by the old sawmill. The streambank was previously just fill material and knapweed. The proposed project would repair some of the streambank and increase public benefit. Lech agreed that there is public benefit but reiterated that asphalt is prohibited within the FCD Adopted Rules. Cate Walker asked if they could further research alternative materials and provide additional information to the board for a later decision. The board agreed that additional information on other possible alternatives to asphalt would be appropriate.

John Ellis motioned “to approve the stormwater system as submitted in the application and amendments.” Verdell Jackson seconded. Motion carried unanimously.

Pete asked the Board if they are alright with the new location of the trail and if the issue is the material used to surface the trail. The Board agreed that, yes, the issue is the use of asphalt. The Board again discussed that the City of Whitefish is requiring the use of asphalt and is, essentially, asking FCD to go against the Adopted Rules. Kenny expressed that it puts the landowners along the river in a very unfair position. Kenny, Lech, and John agreed that they should go talk with City.

Bruce explained that the trail has lots of constraints such as the high and diverse uses, ADA approval, terrain, rail roads, and connecting with other paths and bridges.

The Board discussed the previous approval of the project and Scott Rumsey asked for clarification on if the previous approval was a mistake. Pete described that this is a new application, and the Board needs to consider it independently of the prior approval.

The Board asked for background information on the history of the Whitefish trail system and why the trails are located where they are. Bruce described that the first sections of the trail were created in the 1980’s and need to be next to the river to get under the trestle without a tunnel.

Lech Naumovich motioned “to table the trail portion of the application, until we receive further information on trail surface alternatives from the applicant.” Scott Rumsey seconded. Motion carried.

John suggested FCD send a letter to the City stating that this project came before the FDC Board and everything was approved, except the surface of the trail because it violates the FCD Adopted Rules and FCD will deny all similar proposals.

John Ellis motioned “to send a letter to the City of Whitefish stating we have tabled the portion of the 95 Karrow application for the trail that pertains to the asphalt surface, as it violates the Adopted Rules and the FCD will not approve any other.” Lech Naumovich seconded. Motion approved unanimously.

Kody Coxen described that the asphalt would direct runoff away from the river and is better than some other alternatives. Lech agreed and added that this is a very challenging site.

Melissa asked for clarification on the additional materials the Board would like more information on. John asked that the information be provided as soon as possible and include information on the resin-based Natural Pave material and other semi-permeable options. Lech added that they should review the Adopted Rules and include information on how the materials do or do not comply, what the pros and cons are, or why a material will not work.

The next meeting is scheduled for Monday, May 24, 2021, 7:00 P.M. via ZOOM.

Adjournment: John Ellis motioned "to adjourn." Donna Pridmore seconded. Motion carried unanimously. As there was no further business, the meeting was adjourned at 3:36 P.M.

Submitted By:

Ginger Kauffman
Administrator

Hailey Graf
Resource Conservationist

Minutes approved by FCD Board motion made on:

<u>6/28/2021</u>	<u>John Ellis</u>	<u>Vice-Chair</u>
(Date)	(Signature)	(Title - Chair etc.)